No. 08-1098

Supreme Court, U.S.
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In The

Supreme Court of the United States

RICHARD MADSEN and NANCY MADSEN,

Petitioners,

vs.

JP MORGAN CHASE BANK, N.A.,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Utah

PETITIONERS' SUPPLEMENTAL BRIEF

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INTERVENING *WYETH* CASE WARRANTS REMAND

Plaintiffs Richard Madsen and Nancy Madsen (hereinafter collectively referred to as "Madsens") respectfully submit this Supplemental Brief pursuant to Rule 15.8 of the Rules of the Supreme Court of the United States.

Madsens filed their Petition for Writ of Certiorari on March 2, 2009. On March 4, 2009, this Court issued its decision in *Wyeth v. Levine*, 555 U.S. ___, 129 S.Ct. 1187, ___ L.Ed.2d ___ (2009). In that decision, this Court stated, **"[W]e start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress."** *Id.*, 129 S.Ct. at 1194-95. (Internal quotation marks omitted, emphasis added.)[1]

On March 9, 2009, this Court addressed two Petitions for Writ of Certiorari, on cases where the central issue was federal preemption. These cases were *Pennsylvania Employees Benefit Trust Fund v. Zeneca, Inc.*, 499 F.3d 239 (3rd Cir. 2007), and *Colacicco v. Apotex, Inc.*, 521 F.3d 253 (3rd Cir. 2008), respectively.

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[1] On page 9 of their *Petition for Writ of Certiorari*, Madsens cited similar language from *Altria v. Good*, ___ U.S. ___, 129 S.Ct. 538 (2008). But *Wyeth v. Levine*, *supra*, reinforces, emphasizes, and clarifies the similar language from *Altria*, *supra*.

In each of the above cases, this Court granted the Petition for Writ of Certiorari, vacated the judgment, and remanded the action for further consideration in light of *Wyeth v. Levine*. See 2009 WL 578681 (U.S. No. 07-822) and 2009 WL 578582 (U.S. No. 08-437), respectively.

Likewise, this Court should vacate the judgment, and remand the present action to the Utah Supreme Court for consideration in light of *Wyeth v. Levine*, *supra*. Specifically, there is absolutely nothing in the entire **34 year** record of this case to show that it was the "clear and manifest purpose of Congress" to preempt contractual or common law rights of a pledgor-pledgee relationship.

Respectfully submitted,

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